

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOANNE ELIZABETH CLEVELAND, )  
et al., )

Plaintiff(s), )

v. )

COMPASS VISION INC., et al., )

Defendant(s). )  
\_\_\_\_\_ )

No. C07-5642 BZ

Related Case: C07-3431 BZ

**ORDER SCHEDULING JURY TRIAL  
AND PRETRIAL MATTERS**

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. TENTATIVE DATES

Trial Date: **Monday, 5/11/2009, 20 days**

Pretrial Conference: **Tuesday, 4/21/2009, 3:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 3/18/2009**

Last Day for Expert Discovery: **Friday, 2/6/2009**

Last Day for Expert Disclosure: **Friday, 1/30/2009**

Close of Non-expert Discovery: **Friday, 1/23/2009**

1 A status conference is set for **September 15, 2008 at**  
2 **3:00 p.m.** to discuss whether these cases should be  
3 consolidated for trial. The final trial schedule will be set  
4 at the conference. As discussed at the case management  
5 conference, the parties shall meet and confer prior to the  
6 conference to discuss the most efficient and appropriate way  
7 to present these cases to a jury.

8 **2. DISCLOSURE AND DISCOVERY**

9 As discussed at the case management conference, the  
10 parties are **ORDERED** to meet and confer regarding discovery  
11 issues and stipulate to a discovery plan. By no later than  
12 **April 15, 2008**, the parties shall file a proposed order  
13 approving their stipulated discovery plan.

14 The parties are reminded that a failure to voluntarily  
15 disclose information pursuant to Federal Rule of Civil  
16 Procedure 26(a) or to supplement disclosures or discovery  
17 responses pursuant to Rule 26(e) may result in exclusionary  
18 sanctions. Thirty days prior to the close of non-expert  
19 discovery, lead counsel for each party shall serve and file a  
20 certification that all supplementation has been completed.

21 In the event a discovery dispute arises, **lead counsel** for  
22 each party shall meet in person or, if counsel are outside the  
23 Bay Area, by telephone and make a good faith effort to resolve  
24 their dispute. Exchanging letters or telephone messages about  
25 the dispute is insufficient. The Court does not read  
26 subsequent positioning letters; parties shall instead make a  
27 contemporaneous record of their meeting using a tape recorder  
28 or a court reporter.

1 In the event they cannot resolve their dispute, the  
2 parties must participate in a telephone conference with the  
3 Court **before** filing any discovery motions or other papers.  
4 The party seeking discovery shall request a conference in a  
5 letter filed electronically not exceeding two pages (with no  
6 attachments) which briefly explains the nature of the action  
7 and the issues in dispute. Other parties shall reply in  
8 similar fashion within two days of receiving the letter  
9 requesting the conference. The Court will contact the parties  
10 to schedule the conference.

11 3. MOTIONS

12 Consult Civil Local Rules 7-1 through 7-5 and this  
13 Court's standing orders regarding motion practice. Motions  
14 for **summary judgment** shall be accompanied by a statement of  
15 the material facts not in dispute supported by citations to  
16 admissible evidence. The parties shall file a joint statement  
17 of undisputed facts where possible. If the parties are unable  
18 to reach complete agreement after meeting and conferring, they  
19 shall file a joint statement of the undisputed facts about  
20 which they do agree. Any party may then file a separate  
21 statement of the additional facts that the party contends are  
22 undisputed. A party who without substantial justification  
23 contends that a fact is in dispute is subject to sanctions.

24 A Chambers copy of all briefs shall be e-mailed in  
25 WordPerfect or Word format to the following address:  
26 bzpo@cand.uscourts.gov.

27 4. MEDIATION

28 By agreement of the parties, this matter has been

1 referred for an Mediation to be conducted by **August 1, 2008**.

2 The parties shall promptly notify the Court whether the case  
3 is resolved at the Mediation.

4 5. SETTLEMENT

5 This case has been referred for assignment to a  
6 Magistrate Judge to conduct a settlement conference in January  
7 or February of 2009, in the event the case is not resolved at  
8 the Mediation. Counsel will be contacted by that judge's  
9 chambers with a date and time for the conference.

10 6. PRETRIAL CONFERENCE

11 Not less than thirty days prior to the date of the  
12 pretrial conference, the parties shall meet and take all steps  
13 necessary to fulfill the requirements of this Order.

14 Not less than twenty-one days prior to the pretrial  
15 conference, the parties shall: (1) serve and file a joint  
16 pretrial statement, containing the information listed in  
17 **Attachment 1**, and a proposed pretrial order; (2) serve and  
18 file trial briefs, Daubert motions, motions *in limine*,  
19 proposed findings of fact and conclusions of law, and  
20 statements designating excerpts from discovery that will be  
21 offered at trial (specifying the witness and page and line  
22 references); (3) exchange exhibits, agree on and number a  
23 joint set of exhibits and number separately those exhibits to  
24 which the parties cannot agree; (4) deliver all marked trial  
25 exhibits directly to the courtroom clerk, Ms. Scott; (5)  
26 deliver one extra set of all marked exhibits directly to  
27 Chambers; and (6) submit all exhibits in three-ring binders.  
28 Each exhibit shall be marked with an exhibit label as

1 contained in **Attachment 2**. The exhibits shall also be  
2 separated with correctly marked side tabs so that they are  
3 easy to find.

4 No party shall be permitted to call any witness or offer  
5 any exhibit in its case in chief that is not disclosed at  
6 pretrial, without leave of Court and for good cause.

7 Lead trial counsel for each party shall meet and confer  
8 in an effort to resolve all disputes regarding anticipated  
9 testimony, witnesses and exhibits. All Daubert motions,  
10 motions *in limine*, and objections will be heard at the  
11 pretrial conference. Not less than eleven days prior to the  
12 pretrial conference, the parties shall serve and file any  
13 objections to witnesses or exhibits or to the qualifications  
14 of an expert witness. Daubert motions and motion *in limine*  
15 shall be filed and served not less than twenty days prior to  
16 the conference. Oppositions shall be filed and served not  
17 less than eleven days prior to the conference. There shall be  
18 no replies.

19 Not less than twenty-one days prior to the pretrial  
20 conference the parties shall serve and file requested voir  
21 dire questions, jury instructions, and forms of verdict. The  
22 following jury instructions from the *Manual of Model Civil*  
23 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be  
24 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,  
25 3.1-3.3. Do not submit a copy of these instructions. Counsel  
26 shall submit a joint set of case specific instructions. Any  
27 instructions on which the parties cannot agree may be  
28 submitted separately. The Ninth Circuit Manual should be used

1 where possible. Each requested instruction shall be typed in  
2 full on a separate page with citations to the authority upon  
3 which it is based. Proposed jury instructions taken from the  
4 Ninth Circuit Manual need only contain a citation to that  
5 source. Any modifications made to proposed instructions taken  
6 from a manual of model instructions must be clearly indicated.  
7 In addition, all proposed jury instructions should conform to  
8 the format of the Example Jury Instruction attached to this  
9 Order. Not less than eleven days prior to the pretrial  
10 conference, the parties shall serve and file any objections to  
11 separately proposed jury instructions.

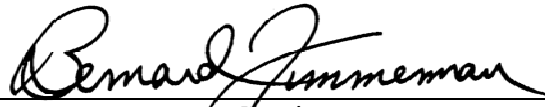
12 Jury instructions that the Court has given in prior cases  
13 may be downloaded from the Northern District website at  
14 **<http://www.cand.uscourts.gov>**. (Instructions are located on  
15 the "Judge Information" page for Magistrate Judge Zimmerman.)  
16 The Court will generally give the same instructions in cases  
17 involving similar claims unless a party establishes, with  
18 supporting authorities, that the instruction is no longer  
19 correct or that a different instruction should be given.  
20 CACI instructions generally will be given instead of BAJI  
21 instructions.

22 All motions, proposed findings of fact and conclusions of  
23 law and trial briefs shall be e-mailed in WordPerfect or Word  
24 format to the following address: [bzpo@cand.uscourts.gov](mailto:bzpo@cand.uscourts.gov)

25 At the time of filing the original with the Clerk's  
26 Office, two copies of all documents (but only one copy of the  
27 exhibits) shall be delivered directly to Chambers (Room 15-  
28 6688). Chambers' copies of all pretrial documents shall be

three-hole punched at the side, suitable for insertion  
into standard, three-ring binders.

Dated: March 27, 2008

A handwritten signature in black ink, reading "Bernard Zimmerman". The signature is fluid and cursive, with the first name "Bernard" and last name "Zimmerman" clearly distinguishable. It is written above a horizontal line.

Bernard Zimmerman  
United States Magistrate Judge

G:\BZALL\BZCASES\CLEVELAND V. COMPASS VISION\TRIAL SCHEDULING ORDER (WILSON &  
CLEVELAND).wpd

**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

**(1) The Action.**

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

**(2) The Factual Basis of the Action.**

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

**(3) Trial Preparation.**

A brief description of the efforts the parties have



1 made to resolve disputes over anticipated testimony,  
2 exhibits and witnesses.

3 (A) Witnesses to be Called. In  
4 lieu of FRCP 26(a)(3)(A), a  
5 list of all witnesses likely  
6 to be called at trial, other  
7 than solely for impeachment or  
8 rebuttal, together with a  
9 brief statement following each  
10 name describing the substance  
11 of the testimony to be given.

12 (B) Estimate of Trial Time. An  
13 estimate of the number of  
14 court days needed for the  
15 presentation of each party's  
16 case, indicating possible  
17 reductions in time through  
18 proposed stipulations, agreed  
19 statements of facts, or  
20 expedited means of presenting  
21 testimony and exhibits.

22 (C) Use of Discovery Responses. In  
23 lieu of FRCP 26(a)(3)(B), cite  
24 possible presentation at trial  
25 of evidence, other than solely  
26 for impeachment or rebuttal,  
27 through use of excerpts from  
28 depositions, from  
interrogatory answers, or from  
responses to requests for  
admission. Counsel shall  
state any objections to use of  
these materials and that  
counsel has conferred  
respecting such objections.

(D) Further Discovery or Motions.  
A statement of all remaining  
motions, including Daubert  
motions.

23 **(4) Trial Alternatives and Options.**

24 (A) Settlement Discussion. A  
25 statement summarizing the  
26 status of settlement  
27 negotiations and indicating  
28 whether further negotiations  
are likely to be productive.

(B) Amendments, Dismissals. A  
statement of requested or

1 proposed amendments to  
2 pleadings or dismissals of  
parties, claims or defenses.

3 (C) Bifurcation, Separate Trial of  
4 Issues. A statement of whether  
bifurcation or a separate  
5 trial of specific issues is  
feasible and desired.

6 (5) **Miscellaneous.**

7 Any other subjects relevant to the trial of the action,  
8 or material to its just, speedy and inexpensive  
determination.

**ATTACHMENT 2**

**USDC**  
Case No. CV07-03431 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV07-03431 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

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**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV07-03431 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV07-03431 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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